

REMARKS

Claim 5, amended as proposed, incorporates features from claim 6 and claim 7 has been amended to be dependent on claim 5. No new matter has been introduced. Claims 1-5 and 7-17 remain pending in this application upon entry of this amendment.

Claims 1-4, 8-10 and 12-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Somers (U.S. Patent 6,243,396) in view of Schuster et al. (U.S. Patent 6,363,053; hereinafter Schuster). The rejection is respectfully traversed.

Claim 1 recites an apparatus that includes a service level agreement manager that includes an admission controller, a performance measurement module and a specification module. Claim 1 recites that the performance measurement module is configured to measure performance of the service implementation and modify an estimated capacity of the service provider based on the measured performance.

The Final Office Action maintains that Somers discloses a performance measurement module that is configured to measure performance of a service implementation, but admits that Somers does not disclose modifying an estimated capacity of the service provider based on the measured performance (Office Action – page 3). The Office Action, however, states that Schuster discloses this feature and points to col. 12, lines 53-67 and col. 13, lines 1-7 for support. The applicant respectfully disagrees.

Schuster at col. 12, line 53 to col. 13, line 7 discloses that quantifiable quality of service (QoS) characteristics from service level agreement (SLA) 338 are stored in SLA QoS block 340 (See Schuster – Fig. 7). A comparator 342 receives the specified QoS characteristics from block 340 and the measured QoS characteristics from QoS ID block 334 and compares the measured QoS characteristics to the specified QoS characteristics. An output 344 from comparator 342

indicates conformance to the SLA. The conformance output 344 may be in the form of a report that indicates a percentage by which a measured QoS characteristic deviates from the QoS characteristic specified in SLA 338. Periods of non-compliance may be cumulatively measured to give an estimate of percentage compliance for a billing period. The report may be used as a basis for reduced billing as a result of non-compliance.

In summary, this portion of Schuster may disclose comparing measured QoS characteristics to characteristics specified in an SLA, generating a report based on compliance/non-compliance to the SLA and using the report as a basis for reducing a bill. This portion of Schuster, however, clearly does not disclose modifying an estimated capacity of the service provider based on the measured performance, as recited in claim 1. In other words, using a compliance/non-compliance report as a basis for reduced billing is not equivalent to and does not suggest modifying an estimated capacity of a service provider based on a measured performance, as recited in claim 1. In contrast, Schuster merely discloses that after a compliance measurement is made, the user's bill may be reduced based on the level of compliance during a billing period. Therefore, the portion of Schuster pointed to in the Office Action, as well as any other portion, does not disclose or suggest modifying an estimated capacity of a service provider based on the measured performance.

Therefore, for at least the reasons discussed above, the combination of Somers and Schuster does not disclose or suggest each of the features of claim 1. Accordingly, withdrawal of the rejection and allowance of claim 1 are respectfully requested.

Claim 2 depends on claim 1 and is patentable for at least the reasons given with respect to claim 1. Accordingly, withdrawal of the rejection and allowance of claim 2 are respectfully requested.

Independent claims 3, 8 and 12 recite features similar to those discussed above with respect to claim 1. Similar to the discussion above with respect to claim 1, neither Somers nor Schuster discloses or suggests each of the features of claims 3, 8 and 12. Accordingly, withdrawal of the rejections and allowance of claims 3, 8 and 12 are respectfully requested.

Claims 4, 9, 10, 13 and 14 variously depend on claims 3, 8 and 12, respectively, and are patentable for at least the reasons their respective independent claims are patentable. Accordingly, withdrawal of the rejections and allowance of claims 4, 9, 10, 13 and 14 are respectfully requested.

Claim 5 has been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Ball et al. (U.S. Patent 6,446,200; hereinafter Ball) and claims 6 and 7 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Ball and further in view of Schuster.

Claim 5, amended as proposed, incorporates features from canceled claim 6. Presumably, amended claim 5 would be considered by the Examiner to be unpatentable based on the combination of Somers, Ball and Schuster, as set forth in the Office Action with respect to claim 6. The applicant respectfully disagrees.

Claim 5, as amended, recites modifying an estimated capacity associated with the service organization based on the at least one performance measurement. The Office Action admits that neither Somers nor Ball discloses this feature, but states that Schuster discloses this feature and points to col. 12, line 53 to col. 13, line 7 for support (Office Action – page 10). The applicant respectfully disagrees.

As discussed above with respect to claim 1, this portion of Schuster, as well as any other portion, does not disclose modifying an estimated capacity associated with a service organization based on the at least one performance measurement, as recited in amended claim 5.

For at least the reasons discussed above, the combination of Somers, Ball and Schuster does not disclose or suggest each of the features of claim 5. Accordingly, withdrawal of the rejection and allowance of claim 5 are respectfully requested.

Claim 7 is dependent on claim 5 and is believed to be allowable for at least the reasons claim 5 is allowable. Accordingly, withdrawal of the rejection and allowance of claim 7 are respectfully requested.

Claims 11 and 15 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Schuster and further in view of Ball. The rejection is respectfully traversed.

Claims 11 and 15 are dependent on claims 8 and claim 12, respectively, and are believed to be allowable for at least the reasons claims 8 and 12 are allowable. Ball does not make up the deficiencies in the combination of Somers and Schuster with respect to claims 8 and 12 discussed above. Accordingly, withdrawal of the rejection and allowance of claims 11 and 15 are respectfully requested.

Claims 16 and 17 have been rejected under 35 U.S.C. § 103 as being unpatentable over Somers in view of Schuster and further in view of Aronberg et al. (U.S. Patent 6,117,188; hereinafter Aronberg) and Knight et al. (U.S. Patent 6,442,608; hereinafter Knight). The rejection is respectfully traversed.

Claims 16 and 17 are dependent on claim 8 and are believed to be allowable for at least the reasons claim 8 is allowable. Neither, Aronberg nor Knight, taken singly or in combination,

makes up for the deficiencies in the combination of Somers and Schuster described above with respect to claim 8.

Claim 16 recites that each of the plurality of client processes is assigned a number of tokens and when determining whether to accept the request from a first client process to a first service level manager, the first service level manager is configured to determine whether to accept the request based on the number of tokens associated with the first client process. As to claim 16, the Office Action states that Knight discloses a network in which each of a number of client processes is assigned a number of sessions and that a first service level manager is configured to determine whether to accept a request from a first client process based on the number of sessions associated with the first client process and points to col. 23, line 33 to col. 25, line 48 for support (Office Action – page 11). The Office Action admits that Knight does not disclose the use of tokens associated with a client process, but states that Aronberg discloses the use of a fixed number of tokens used to regulate network access and points to col. 4, line 56 to col. 5, line 30 for support (Office Action – page 12). The Office Action further states that it would have been obvious to combine Knight and Aronberg “because tokens provide a functional alternative to the counter as implemented in Knight” (Office Action – page 12). The applicant respectfully disagrees.

Knight is directed to managing the access of a network system using distributed authorization controlled by distributed nodes (Knight – col. 1, lines 15-18). Aronberg, in contrast, is directed a system for distributing software in a network environment (Aronberg – Abstract). Knight and Aronberg are clearly directed to different environments and it would not have been obvious to combine features from these disparate environments without the benefit of

the applicant's disclosure. The applicant also notes that no portion of either Knight or Aronberg is pointed to as providing objective motivation for combining these references.

Further, the Office Action states that it would have been obvious to combine the teachings of Somers-Schuster with the teachings of Knight-Aronberg "because limiting access of specific clients would ensure a more consistent level of service for all clients" (Office Action – page 12). The applicant respectfully disagrees.

No portion of any of the four references is pointed to as providing objective motivation for combining the four references. The motivation provided in the Office Action is a conclusory statement regarding an alleged benefit resulting from the combination. Such motivation does not satisfy the requirements of 35 U.S.C. § 103.

In addition, as admitted in the Office Action, Knight does not disclose assigning a number of tokens to each of a number of client processes, as recited in claim 16, but indicates that tokens may be used as a functional alternative to the counter used in Knight. The Office Action also relies upon Aronberg as disclosing the use of tokens (Office Action – page 12).

More particularly, Aronberg at col. 4, line 56 to col. 5, line 30 has been used to allegedly disclose the use of tokens to regulate network access. This portion of Aronberg discloses that a dialog box 401 may be used by an administrator to control the number of concurrent software distributions (See Fig. 4). A token server box 401B may be checked to indicate use of the token server feature. An agent may then wait for a token to allow the user to download applications (Aronberg – col. 5, lines 1-15). This portion of Aronberg does not disclose determining whether to accept a request based on the number of tokens associated with a client process, as recited in claim 16. Therefore, even if Knight and Aronberg were combined with the combination of Somers and Schuster, the claimed invention would not result.

Claim 17 recites that when the request from the first client process is accepted, the first service level manager is further configured to deduct a number of tokens from the first client process. As to claim 17, the Office Action states that Knight discloses deducting a count associated with a first client process when a request from a client process is accepted and points to Knight at col. 22, line 23 to col. 25, line 48 for support (Office Action – page 12). The Office Action further states that it would have been obvious to use tokens instead of a count for the reasons discussed with respect to claim 16. The applicant respectfully disagrees.

Knight discloses that an entity, such as a company, may be assigned a threshold value associated with a maximum number of sessions that may be established for the entity at a particular time (Knight – col. 22, lines 35-47). Assigning sessions to an entity, such as a company, is not equivalent to assigning sessions to each of plurality of client processes. In addition, Knight does not further disclose deducting a number of sessions from the client process if the request is accepted. Rather, Knight, as best understood by the applicant, merely compares the local session threshold value with the local session counter value to determine whether to authorize the request (Knight – col. 23, line 45 to col. 24, line 65). This is not equivalent to and does not suggest deducting a number of sessions or tokens from a first client process if the request is accepted. Aronberg also does not disclose deducting a number of tokens from the first client process when a request from the first client process is accepted. Therefore, the combination of Somers, Schuster, Aronberg and Knight does not disclose or suggest each of the features of claim 17.

For at least these reasons, withdrawal of the rejections and allowance of claims 16 and 17 are respectfully requested.

CONCLUSION

The applicant respectfully requests that this amendment under 37 C.F.R. § 1.116 be entered, placing the application in condition for allowance. The applicant submits that the proposed amendment does not raise any new issue or necessitate the undertaking of any additional search by the Examiner since the amendment merely incorporates the features from a dependent claim into an independent claim. Therefore, this Amendment should allow for immediate action by the Examiner. Furthermore, the applicant submits that the entry of this Amendment would place the application in better form for appeal, in the event that the application is not allowed. If there are any outstanding issues which might be resolved by an interview or an Examiner's Amendment, please feel free to call the undersigned attorney at the number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2339 and please credit any excess fees to such deposit account.

Respectfully submitted,

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MARKED-UP VERSION SHOWING CHANGES MADE

IN THE CLAIMS:

Please amend claims 5 and 7 as follows.

5. (Two Times Amended) A method for managing system performance, comprising:

providing a service level agreement manager;

forming a service level agreement between a client organization and a service organization;

receiving a request from the client organization to the service level agreement manager;

with the service level agreement manager,

determining if the request is within the scope of the service level agreement;

if the request is within the scope of the service level agreement, providing the request to a performance measurement module and to the service organization;

obtaining a result from the service organization in response to the request;

taking at least one performance measurement associated with performance response of the service organization to the request; and

checking the at least one performance measurement taken against the service level agreement;

recording the at least one performance measurement; and

modifying an estimated capacity associated with the service organization based on the at least one performance measurement.

7. (Amended) The method of Claim [6] 5, further comprising providing the result obtained to the client.